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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,020	02/19/2004	Joseph L. Owades	OW-25	1699
27667	7590	04/12/2006	EXAMINER	
HAYES, SOLOWAY P.C. 3450 E. SUNRISE DRIVE, SUITE 140 TUCSON, AZ 85718			PEARSE, ADEPEJU OMOLOLA	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 04/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/784,020

Applicant(s)

OWADES, JOSEPH L.

Examiner

Adepeju Pearse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1 and 3-16 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-6, 9 and 10-14 rejected under 35 U.S.C. 102(b) as being anticipated by Hirayama et al (JP 2000 166533). With regard to claim 1, Hirayama et al disclose fermented liquor such as beer having a powdered tea added to it during the production process (Abstract). Tea is known to contain caffeine.
3. With regard to claims 3-4 and 11-12, Hirayama et al disclose that the tea powder can be added in the middle of brewing the beverage ([0007]). It is inherent that boiling and mashing occur in the middle of the brewing process.
4. With regard to claim 5, Hirayama et al disclose that the tea is added to stored sake and/or a solution in aging (Abstract). It is inherent that this stage is after the mashing stage and therefore the tea could be incorporated at any point after mashing.
5. With regard to claims 6, and 13-14, Hirayama et al disclose that the tea is added to stored sake and/or a solution in aging (Abstract). It is inherent that this is the finishing stage.

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6. With regard to claim 9, Hirayama et al disclose fermented liquor such as beer having a powdered tea added to it during the production process in order to provide a beverage having a powdered tea taste. It is inherent that the malt beverage would have improved foaming because it discloses the same elements i.e. tea/caffeine being added to a malt beverage as instantly claimed.

7. With regard to claim 10, Hirayama et al disclose that the tea is added to stored sake and/or a solution in aging (Abstract). It is inherent that this stage is after the fermentation process during the production process.

8. Claims 1-6 and 9-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Chikako (JP Pub. No. 10-179113). Chikako discloses an alcoholic malt beverage such as beer containing black tea as in claims 1 and 9. The tea is added to the mash before filtration, or to the wort during or after boiling or before the filtration of the wort as in claims 3-6 and 10-13 (abstract). The mashing step is prior to the fermentation step (abstract). It is inherent that the filtering of the wort is part of the finishing stage of the brewing process. In addition it is the foaming properties of the brewed beverage would be increased as instantly claimed because the brewed alcoholic beverage disclosed by Chikako comprises tea, which is a source of caffeine.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 7-8 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hirayama et al in view of Ramirez (U.S. Pub. 2002/0102345). Hirayama failed to disclose a recommended dose of caffeine within applicant's range. However, Ramirez discloses that the recommended dose of caffeine by the FDA is 100-200mg (0091), which is within the applicant's range.

However, Ramirez failed to disclose the size of the beverage can. Caffeinated beverages such as coke, diet coke contain about 35mg caffeine per 1 ounce can (www.redbull.com/extras/ingredients.jsp). It would have been obvious to one of ordinary skill in the art to modify the fermented liquor disclosed by Hirayama et al with the teachings of Ramirez and redbull.com by utilizing the amount of tea/caffeine a 1oz carbonated beverage since most caffeinated beverages contain caffeine within this range.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

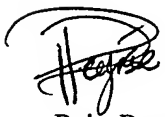
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Peju Pearse
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CAROLYN PADEN
PRIMARY EXAMINER

4-10-06
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